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CLERK OF DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

RMW

JAMES LIGON

Plaintiff,

vs.

CALIFORNIA HIGHWAY PATROL,
CALIFORNIA HIGHWAY PATROL
COMMISSIONER JOSEPH FARROW,
CALIFORNIA HIGHWAY PATROL
OFFICER JOE LAFUACI, CALIFORNIA
HIGHWAY PATROL OFFICER CORY
WALCZAK.

Defendants.

CASE NO:

CV 13-02875

COMPLAINT FOR CIVIL RIGHTS
VIOLATIONS OF THE FOURTH AND
FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION (42
U.S.C. 1983 and 1981); VIOLATION OF
THE CALIFORNIA STATE
CONSTITUTION; ASSAULT AND
BATTERY; NEGLIGENCE; AND
DAMAGES

(Jury Trial Demanded)

JURISDICTION

1. This court has subject matter jurisdiction pursuant to 42 U.S.C. §1983; 1981, 28 U.S.C. §§ 1331, 1343 and 2201. The Court has pendent jurisdiction and supplemental jurisdiction over the state law claims alleged in this Complaint pursuant to 28 U.S.C. § 1367.

2. All administrative remedies have been exhausted. In compliance with California Government Code § 910 et seq., Mr. Ligon has filed administrative claims for damages under the California Tort Claims Act with the California State Board of Control, which has declined to exercise jurisdiction over these actions.
3. A substantial part of the events giving rise to the claims alleged in this Complaint arose in the County of Santa Clara, California. Venue therefore lies in the United States District Court for the Northern District of California, San Jose Division, pursuant to 28 U.S.C. § 84(a), 28 U.S.C. § 1391(b)(2) and Civil Local Rule 3-2(d).

4. The amount in controversy exceeds \$75,000.00

PARTIES

5. Plaintiff James Ligon is, and at all relevant times herein mentioned was, a citizen of the State of California and a resident of the County of Santa Clara. Mr. Ligon is an African-American male and, by physical appearance, is a person of color.
6. Defendant California Highway Patrol (hereinafter CHP), headquartered in Sacramento, California is a division of the State of California in charge of patrolling California State Highways. Upon information and belief, the CHP receives federal funds through federal grants from the United States Department of Justice or another federal agency. As such, the CHP is legally required to conduct its activities in a racially non-discriminatory manner.
7. At all times herein mentioned, California Highway Patrol Officer JOE LAFUACI, sued here in both his individual and official capacities, is a resident of California who is employed by the CHP. Officer LAFUACI was involved in the stop of plaintiff JAMES

1 LIGON. All actions taken by Officer LAFUACI while working as an officer of the CHP
2 was taken under color of state law.

3
4 8. At all times herein mentioned, California Highway Patrol Officer CORY WALCZAK,
5 sued here in both his individual and official capacities, is a resident of California who is
6 employed by the CHP. Officer WALCZAK was involved in the stop of plaintiff JAMES
7 LIGON. All actions taken by Officer WALCZAK while working as an officer of the CHP
8 was taken under color of state law.

9
10 9. Upon information and belief, defendant JOSEPH FARROW is Commissioner of the CHP
11 and a resident of California. Upon information and belief, defendant Commissioner
12 FARROW directly or indirectly participated in the authorization, planning, training, and
13 supervision of the actions of the individual CHP officers involved in this case, including
14 Officers JOE LAFUACI and CORY WALCZAK. Upon information and belief,
15 defendant Commissioner FARROW failed to adequately train CHP personnel and to
16 promulgate appropriate policies to prevent illegal and unconstitutional practices, and has
17 established, implemented and enforced illegal and unconstitutional policies and practices
18 that have caused plaintiffs' injuries.
19
20

21 **STATEMENT OF FACTS**

22 10. On June 21, 2012 CHP officers Joe Lafauci and Cory Walczak were on duty in full CHP
23 uniform in a marked CHP vehicle. They were assigned to the CHP office in Redwood
24 City, California. Both officers were conducting traffic enforcement on Highway 101 near
25 the University Avenue exit in Palo Alto, California.

26 11. Officer Walczak was outside of his vehicle conducting Lydar (speed gun) and Officer
27 Lafauci was sitting inside of the vehicle in the driver seat conducting radar.
28

- 1 12. Officer Walczak saw a Toyota Corolla vehicle driving southbound on highway 101 past
2 University Avenue in Palo Alto. Officer Walczak identified the plaintiff as a black male
3 based on the "corn rows" the Plaintiff had. The reference is made in Sunnyvale Police
4 Department, Officer Eric Suzuki supplemental report page 4 of 6. The vehicle was being
5 driven by the Plaintiff.
- 6 13. The Toyota Corolla driven by plaintiff was traveling southbound on highway 101 when
7 the CHP officers activated their vehicle enforcement lights near the Rengstorff exit in
8 Mountain View. The plaintiff continued to drive at normal freeway speeds and exited the
9 Mathilda off ramp in Sunnyvale, as he was headed home.
- 10 14. The plaintiff decided to continue home, and ultimately slowed and came to a complete
11 stop in front of 284 Alturas in Sunnyvale, California, which is less than a mile from the
12 Highway 101 where the officers first attempted to stop plaintiff's vehicle.
- 13 15. Both officers positioned themselves at an angle to the plaintiff's vehicle approximately 20
14 to 30 feet behind the plaintiff's Toyota Corrolla. Officers Lafauci and Walczak prepared
15 for a traffic stop and exited their vehicle immediately. Officer Lafauci had his service
16 weapon drawn and pointed at plaintiff's vehicle. Meanwhile Officer Walczak did not
17 have his weapon drawn at all.
- 18 16. As the plaintiff exited the vehicle, Officer Lafauci ordered him out of his car. As plaintiff
19 exited his car with his hands up, he moved away from his vehicle towards the center of
20 the street as directed. Unable to see the officers because of the CHP spotlight and red
21 light burner, the plaintiff, with hands raised, indicated to the officers that he did not have
22 any weapons.
- 23 17. At this point, Officer Lafuaci fired his CHP issued service weapon at plaintiff. Officer
24 Lafuaci emptied his magazine and plaintiff was struck an estimated 7 times in the front of
25 his body. As plaintiff stumbled forward and towards the opposite side of the street away
26 from the CHP cruiser, Officer Lafuaci shot plaintiff four more times in the back. Officer
27 Walczak never fired a single round. No weapons were located on or around plaintiff.
28

18. After being shot at an estimated 12 times, plaintiff was lying on his back on the ground with multiple gunshot wounds and was no longer moving. The gunshot wound entrances were all over his body including but not limited to the front side of the upper torso, back side of his upper torso, legs, thighs, hands, shoulders and legs.

19. Officer Walczak was present during the acts herein alleged and failed to prevent the wrongful acts which violated plaintiffs' constitutional rights. Officer Walczak could have prevented the violation.

20. After being shot, plaintiff was taken to Stanford hospital. Plaintiff was severely injured physically and mentally and continues to suffer from damages proximately caused as a result of the wrongful acts described herein.

FIRST CAUSE OF ACTION
(42 U.S.C. SECTION 1983)
(Against Defendants Joe Lafauci and Cory Walczak)

25. Plaintiff hereby realleges and incorporates by reference herein all previous paragraphs of this Complaint.

26. In doing the acts complained of herein, defendants acted under color of law to deprive plaintiff of certain constitutionally protected rights including, but not limited to:

a. The right to be free from unreasonable searches and seizures, as guaranteed by the fourth Amendment to the United States Constitution;

b. The right not to be deprived of life or liberty without due process of law, as guaranteed by the Fifth and Fourteenth amendments to the United States Constitution;

c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment to the United States Constitution; and

d. The right to be free from interference with the zone of privacy, as protected by the Fourth and Ninth Amendments to the United States Constitution.

WHEREFORE, plaintiff prays for relief as hereinafter set forth.

SECOND CAUSE OF ACTION
(42 U.S.C. SECTION 1983)
(Against All Defendants)

27. Plaintiff hereby realleges and incorporates by reference herein all previous paragraphs of this Complaint.

28. California Highway Patrol Commissioner Joseph Farrow failed to adequately train Officers Joe Lafauci and Cory Walczak in the proper use of force; proper detentions and arrest; proper conduct towards persons; and treating persons in a manner that is not racially discriminatory. The lack of adequate supervisory response and discipline by Defendant California Highway Patrol demonstrates the existence of an informal custom or policy that tolerates and promotes the continuing use of excessive force against improper detention and arrests of; improper conduct toward, and violation of civil rights of persons within the State of California by California Highway Patrol Officers.

29. Based on information and belief, plaintiff alleges that prior to the date of the subject incident involving plaintiff, defendant Officers had a history of engaging in acts of excessive force, improper detentions and arrest and treating persons in a manner that is racially discriminatory. Based on information and belief, plaintiff further alleges that despite their knowledge of defendant officer's repeated, egregious misconduct, defendant CHP Commissioner Joseph Farrow failed to properly and adequately train, supervise, and discipline defendant Officers Lafauci and Walczak for said repeated and egregious misconduct.

30. Defendant CHP, by and through its supervisory employees and agents, and Commissioner Joseph Farrow has and had a mandatory duty of care imposed on it by the Fourth and Fourteenth Amendments to the United States Constitution, to properly and adequately hire ,

1 train, retain, supervise and discipline its Officer employees so as to avoid unreasonable risk
2 of harm to citizens as the proximate result of CHP officers assaulting and battering, effecting
3 false arrest, imprisonment and treating persons in a racially discriminatory manner. With
4 deliberate indifference, CHP, CHP Commissioner Joseph Farrow breached his duty of care to
5 plaintiff in that he *1.* failed to adequately hire, retain, supervise, discipline, and train CHP
6 Officers LaFauci and Walczak in the proper use of force, effecting proper and reasonable
7 arrests, and treating persons in a manner that is not racially discriminatory; *2.* Failed to have
8 adequate policies and procedures regarding proper use of force; effecting proper and
9 reasonable arrests, and treating persons in a manner that is not racially discriminatory; *3.*
10 acted with deliberate indifference, in reckless and or conscious disregard of the prior
11 misconduct of defendant officers; *4.* approved, ratified, condoned, encouraged and or tacitly
12 authorized defendant officers Lafauci, Walczak to continue their course of misconduct of use
13 of excessive force, effecting false arrest and imprisonments and treating persons in a racially
14 discriminatory manner, resulting in a violation of plaintiff's rights, and injuries and damages
15 to plaintiff as alleged herein.

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19 31. This lack of adequate hiring, retention, supervision, training, and discipline of defendants
20 Lafauci and Walczak demonstrates the existence of an informal custom or policy of
21 promoting, tolerating, and or ratifying the continuing use of excessive unreasonable force;
22 wrongful false arrest; and treating persons in a racially discriminatory manner by officers
23 employed by defendant CHP.

24
25 32. In doing the acts complained of herein, CHP and CHP Commissioner Joseph Farrow
26 acted under color of law to deprive plaintiff of certain constitutionally protected rights
27 including, but not limited to:
28

1 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
2 fourth Amendment to the United States Constitution;

3 b. The right not to be deprived of life or liberty without due process of law, as guaranteed
4 by the Fifth and Fourteenth amendments to the United States Constitution;

5 c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment
6 to the United States Constitution; and

7 d. The right to be free from interference with the zone of privacy, as protected by the
8 Fourth and Ninth Amendments to the United States Constitution.

9 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

10
11 **THIRD CAUSE OF ACTION**
12 (ASSAULT and BATTERY)
(Against All Defendants)

13 33. Plaintiff realleges and incorporates by reference herein all previous paragraphs of this
14 complaint.

15 34. Defendants Joe Lafauci and Cory Walczak placed plaintiff in immediate fear of death and
16 severe bodily harm by assaulting and battering plaintiff without any just provocation or
17 cause. Said defendants' conduct was neither privileged nor justified under statute or common
18 law. As a proximate result of said defendant's conduct, plaintiff suffered damages hereinafter
19 set forth.

20 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

21
22 **FOURTH CAUSE OF ACTION**
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)
23 (Against All Defendants)

24 35. Plaintiff realleges and incorporates by reference herein all previous paragraphs of this
25 complaint.

26 36. The conduct of defendant officers Lafauci and Walczak as set forth herein, was extreme
27 and outrageous and beyond the scope of conduct that should be tolerated by citizens in a
28

1 democratic and civilized society. Defendant's committed the aforementioned extreme and
2 outrageous acts wit the intent to inflict severe mental and emotional distress upon plaintiff.

3 37. As a proximate result of said defendant officers' willful, intentional and malicious
4 conduct, plaintiff suffered severe and extreme mental and emotional distress. Therefore,
5 plaintiff is entitled to an award of punitive damages against said defendants/ plaintiff has
6 suffered injuries and damages hereinafter set forth.

7
8 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

9
10 **FIFTH CAUSE OF ACTION**

11 **(NEGLIGENCE)**

12 **(Against All Defendants)**

13 38. Plaintiff realleges and incorporates by reference herein all previous paragraphs of this
14 complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,
15 wanton and oppressive conduct by defendants, and any and all allegations requesting punitive
16 damages.

17 39. At all times herein mentioned, defendant officers Lafauci and Walczak were subject to a
18 duty of care to avoid causing injuries and damages to persons by not using excessive force on
19 them, not effecting wrongful detentions and arrest, and by treating persons in a manner that is
20 not racially discriminatory. The wrongful conduct of said defendants as set forth herein, did
21 not comply with the standard of care to be exercised by reasonable CHP officers acting in
22 similar circumstances, proximately causing plaintiff to suffer injuries and damages as set
23 forth herein.

24
25 40. As a proximate result of said defendants' negligent conduct, plaintiff suffered severe
26 emotional and mental distress and injury having traumatic effect on plaintiff's emotional
27 tranquility, and damages.
28

SIXTH CAUSE OF ACTION
(NEGLIGENT HIRING, TRAINING, SUPERVISION, AND DISCIPLINE)
(Against All Defendants)

41. Plaintiff hereby realleges and incorporates by reference herein all previous paragraphs of this Complaint.

42. California Highway Patrol Commissioner Joseph Farrow failed to adequately train Officers Joe Lafauci and Cory Walczak in the proper use of force; proper detentions and arrest; proper conduct towards persons; and treating persons in a manner that is not racially discriminatory. The lack of adequate supervisory response and discipline by Defendant, demonstrates the existence of an informal custom or policy that tolerates and promotes the continuing use of excessive force against improper detention and arrests of; improper conduct toward, and violation of civil rights of persons within the State of California by California Highway Patrol Officers.

43. Based on information and belief, plaintiff alleges that prior to the date of the subject incident involving plaintiff, defendant Officers had a history of engaging in acts of excessive force, improper detentions and arrest and treating persons in a manner that is racially discriminatory. Based on information and belief, plaintiff further alleges that despite their knowledge of defendant officer's repeated, egregious misconduct, defendant CHP Commissioner Joseph Farrow failed to properly and adequately train, supervise, and discipline defendant Officers Lafauci and Walczak for said repeated and egregious misconduct.

44. Defendant CHP, by and through its supervisory employees and agents and Commissioner Joseph Farrow has and had a mandatory duty of care imposed on it by the Fourth and Fourteenth Amendments to the United States Constitution, to properly and adequately hire ,

1 train, retain, supervise and discipline its Officer employees so as to avoid unreasonable risk
2 of harm to citizens as the proximate result of CHP officers assaulting and battering, effecting
3 false arrest, imprisonment and treating persons in a racially discriminatory manner. With
4 deliberate indifference, CHP and CHP Commissioner Joseph Farrow breached their duty of
5 care to plaintiff in that they 1. failed to adequately hire, retain, supervise, discipline, and train
6 CHP Officers LaFauci and Walczak in proper use of force, effecting proper reasonable arrest,
7 and treating persons in a manner that is not racially discriminatory; 2. failed to have adequate
8 policies and procedures regarding proper use of force; effecting proper and reasonable arrests,
9 and treating persons in a manner that is not racially discriminatory; 3. acted with deliberate
10 indifference, in reckless and or conscious disregard of the prior misconduct of defendant
11 officers and 4. approved, ratified, condoned, encouraged and or tacitly authorized defendant
12 officers Lafauci and Walczak to continue their course of misconduct of use of excessive
13 force, effecting false arrest and imprisonments and treating persons in a racially
14 discriminatory manner, resulting in a violation of plaintiff's rights, and injuries and damages
15 to plaintiff as alleged herein.

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19 45. This lack of adequate hiring, retention, supervision, training, and discipline of defendants
20 Lafauci and Walczak demonstrates the existence of an informal custom or policy of
21 promoting, tolerating, and or ratifying the continuing use of excessive unreasonable force;
22 wrongful false arrest; and treating persons in a racially discriminatory manner by officers
23 employed by defendant CHP.

24
25 46. In doing the acts complained of herein, CHP and CHP Commissioner Joseph Farrow,
26 acted under color of law to deprive plaintiff of certain constitutionally protected rights
27 including, but not limited to:
28

1 a. The right to be free from unreasonable searches and seizures, as guaranteed by the
2 fourth Amendment to the United States Constitution;

3 b. The right not to be deprived of life or liberty without due process of law, as guaranteed
4 by the Fifth and Fourteenth amendments to the United States Constitution;

5 c. The right to equal protection of the laws, as guaranteed by the Fourteenth amendment
6 to the United States Constitution; and

7 d. The right to be free from interference with the zone of privacy, as protected by the
8 Fourth and Ninth Amendments to the United States Constitution.

9 Said rights are substantive guarantees under the Fourth and/or Fourteenth Amendments to the
10 United States Constitution.

11 WHEREFORE, plaintiff prays for relief as hereinafter set forth.

12 **SEVENTH CAUSE OF ACTION**
13 **(VIOLATION OF CIVIL CODE SECTION 52.1)**
14 **(Against All Defendants)**

15 47. Plaintiff hereby realleges and incorporates by reference herein all previous paragraphs of
16 this Complaint.

17 48. The conduct of defendant officers' as described herein, acting in the course and scope of
18 their employment for defendant CHP violated Civil Code Section 52.1, in that they interfered
19 with plaintiff's exercise and enjoyment of his civil rights, by assaulting and battering him,
20 and wrongfully detaining and or arresting him. Further said defendant officers' violated
21 plaintiff's right to be free from racial discrimination pursuant to the Fourteenth Amendment
22 of the United Sates Constitution, California Constitution and various federal and California
23 Statutes, including California Civil Code Section 52.1, in that their misconduct towards
24 plaintiff was motivated by racial animus.
25
26

27 49. As a direct and proximate result of said defendants' violation of Civil Code Section 52.1
28 Plaintiff suffered violation of his constitutional rights, and suffered damages set forth herein.

1 50. Plaintiff is entitled to injunctive relief and an award for his reasonable attorney's fees
2 pursuant to Civil Code Section 52.1(h).

3 WHEREFORE, plaintiff prays for relief as hereinafter set forth.
4

5
6 **EIGHTH CAUSE OF ACTION**
(VIOLATION OF CIVIL CODE SECTION 51.7)
(Against All Defendants)

7 51. Plaintiff hereby realleges and incorporates by reference herein all previous paragraphs of
8 this Complaint.
9

10 52. Plaintiff is informed and believes and thereon alleges that the conduct of defendant
11 officers' Lafauci and Walczak as described herein, was motivated by racial prejudice against
12 Plaintiff. Plaintiff is and was readily recognizable as African-American. In engaging in such
13 conduct, defendants' violated Plaintiff's rights under California Civil Code Section 51.7 to be
14 free from violence, or intimidation by threat of violence committed against them because of his
15 race. Under the provisions of California Civil Code Section 52(b), defendants' are liable for
16 each violation of Civil Code Section 51.7 for punitive damages, an additional \$25,000.00 and
17 for reasonable attorney's fees.
18

19 53. As a proximate result of defendants'' wrongful conduct plaintiff suffered damages as
20 hereinafter set forth.
21

22 WHEREFORE, plaintiff prays for relief as hereinafter set forth.
23

24 **DEMAND FOR JURY TRIAL**

25 54. Pursuant to Rule 38(b), Federal Rules of Civil Procedure and Rule 3-6, Local Rules,
26 United States District Court, Northern District of California, plaintiffs demand trial by jury
27 for all the issues plead herein so triable.
28

PRAYER

1 55. WHEREFORE, Plaintiff prays for relief, as follows:

- 2 a. For general damages according to proof
- 3 b. For special damages according to proof;
- 4 c. For punitive damages against defendant officers according to proof.
- 5 d. For injunctive relief enjoining defendant CHP from authorizing, allowing, or ratifying the
- 6 practice by any of their employees of making unreasonable and wrongful assaults on
- 7 persons; effecting unreasonable and improper arrest, detentions and imprisonments of persons,
- 8 and from treating persons in a manner that is racially discriminatory, in violation of California
- 9 Civil Code Section 52.1.
- 10 e. For violation of California Civil Code sections 52 and 52.1, punitive damages against
- 11 defendant officers' in the amount of \$75,000.00 for each offense; and reasonable
- 12 attorneys' fees.
- 13 f. For violation of California Civil Code sections 52 and 51.7, punitive damages against
- 14 defendant officers' in the amount of \$25,000.00 for each offence; and reasonable
- 15 attorneys' fees.
- 16 g. For reasonable attorney's fees pursuant to 42 U.S.C. Sections 1983 and 1988;
- 17 h. For costs of suit herein incurred; and
- 18 i. Grant such other and further relief as the Court may deem just and proper.
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25 Dated: 6/11/2013

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NELSON MCELMURRY
27 Attorney for Plaintiff, James Ligon
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